

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 8, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Ray Dwyer

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Sheri K. Mount

OTHERS PRESENT: Mary Finet, Senior Land Use Specialist
Town of Merton Board of Adjustment
Larry Kassens, BA05:102, Architect
Dennis Johnson, BA06:001, Owner
Larry Babb, BA06:002, BA06:003, BA06:004, Builder
Fred Manske, BA06:002, Owner
Catherine & James Burns, BA06:003, Owners
Shirley Henika, BA06:003, neighbor
Nancy Hume, BA06:004, Owner
Duane and Barbara Mlachnik, BA05:100, Owners
Jack Lundy, BA05:100, Neighbor
John & Catherine Robertstad, BA05:071, Owners
David Treichel, BA05:071, Builder
Peter & Karen Banaszak, BA05:071, Neighbors
Dave Smith, BA05:071, Neighbor
Joe Eberle
Bob Sokolowicz

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of January 25, 2006.*

The motion was seconded by Mr. Dwyer and carried unanimously.

NEW BUSINESS:

BA05:102 JOAN SKIMMONS & JOHN MIOTA
Larry Kassens - Petitioner

Mr. Bartholomew *I move to approve the request in accordance with the staff's recommendation, subject to the conditions recommended in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed addition must be no closer to the shore and floodplain than the existing residence.
2. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed addition and any appurtenances, as well as ALL existing structures (including the decks, patio and retaining walls) in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. The addition would be no closer to the shore and floodplain than the existing house and it would be in conformance with all other setback requirements. The addition is also not increasing the footprint or overall size of the residence and therefore the floor area ratio and open space on the property will be unaffected. The house is a substantial structure that has been remodeled before and the permitted improvements already exceed 50% of the fair market value of the structure; therefore, it is reasonable to allow a variance from that provision. The addition would not jeopardize the public's interest and would be in conformance with the spirit and intent of the Ordinance.

BA06:001 DENNIS & MARY JOHNSON TRUST

Mr. Ward

I make a motion to approve the floor area ratio and open space variances and deny the offset variance with the conditions and reasons as stated in the staff report with the following modifications:

Condition #1 shall read as follows: Prior to the issuance of a Zoning Permit for a new residence, the two sheds and detached garage must be removed from the property.

Condition #2 shall read as follows: The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, the attached garage and the boathouse do not exceed 2,975 sq. ft. This will result in a floor area ratio of approximately 19.5%.

The approval of this request, with the required conditions, allows a reasonable use of the property that is not unnecessarily burdensome and is in scale with the lot size. It has not been demonstrated, as required for a variance, that denial of the requested variance from the offset requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would

unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The variance for floor area ratio is reasonable due to the fact that sewer will eventually be available to this property. Once that occurs, the approved floor area ratio of 19.5% would be conforming. This permits a total floor area (not including the fully exposed basement level) of 2,975 sq. ft.; with the basement, this property could contain well over 3,500 sq. ft. of living and storage space, which provides a reasonable use of a property of this size. Conformance with the open space requirement of 15,000 sq. ft. is impossible because the lot area is only 15,257 sq. ft. Therefore, some relief from the open space requirements should be provided. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Board, that the proposed residence and attached garage are far too large for the lot and a smaller residence and attached garage, as approved, still provides for a reasonable use of the property. In addition, approval of the request, as conditioned, will also result in removal of three nonconforming structures from the property. As approved, the residence, attached garage and existing boathouse provide a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a new residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the conditional approval of this request is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial of the request for variances from the floor area ratio and offset requirements, and approval of the request for a variance from the open space requirements, with the following conditions:

1. Prior to the issuance of a Zoning Permit for a new residence, the two sheds, detached garage and boathouse must be removed from the property.
2. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 2,288 sq. ft. This will result in a floor area ratio of approximately 15%.
3. The proposed residence must have a first floor of at least 850 sq. ft. and an attached garage of at least 400 sq. ft.
4. Any proposed storage area over the attached garage must be included in the floor area calculations, unless it is accessible **only** via pull-down stairs from the garage and cannot be accessed from the upper level of the residence either now or in the future. If the house plans indicate that any storage area over the attached garage could be easily converted to living area with a direct connection to the upper level of the residence, a Declaration of Restrictions, stating that area cannot be converted to living area without the approval of the Waukesha County Board of Adjustment or its successor, must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
5. The proposed residence must not exceed three stories (including any exposed basement

level), as viewed from the lake. The proposed residence and attached garage must conform to the height requirements of the Ordinance.

6. The residence must be at least 12.1 ft. from all lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
7. The residence and attached garage must be a minimum of 63 ft. from the 100-year floodplain elevation and 64 ft. from the Ordinary High Water Mark of Okauchee Lake; whichever is more restrictive, with overhangs not to exceed two (2) ft. in width.
8. Any proposed decks or patios must be located a minimum of 55.2 ft. from the 100-year floodplain elevation or Ordinary High Water Mark of Okauchee Lake; whichever is more restrictive.
9. The existing retaining walls can remain as is; however any reconstruction of these structures would require additional permits and approvals and may require additional variances.
10. No new retaining walls will be permitted within 75 ft. of the lake, unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission.
11. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
12. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, as well as all existing structures that are proposed to remain, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.
13. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 12.
14. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use

of the property that is not unnecessarily burdensome and is in scale with the lot size. It has not been demonstrated, as required for a variance, that denial of the requested variances from the floor area ratio and offset requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Conformance with the maximum permitted floor area ratio of 15% would permit a total floor area (not including the fully exposed basement level) of 2,288 sq. ft.; with the basement, this structure could contain well over 3,000 sq. ft. of floor area, which provides a reasonable use of a property of this size. Conformance with the open space requirement of 15,000 sq. ft. is impossible because the lot area is only 15,005 sq. ft. Therefore, some relief from the open space requirements should be provided. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Waukesha County staff, that the proposed residence and attached garage are far too large for the lot and a smaller residence and attached garage, as recommended, would still provide for a reasonable use of the property. In addition, approval of the request, as conditioned, will also result in removal of four nonconforming structures from the property. As recommended, the residence and attached garage provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA06:002 FREDERICK P. MANSKE

Larry Babb - Petitioner

Mr. Dwyer

I make a motion to hold this hearing in abeyance until February 22, 2006 in order to allow the petitioner the opportunity to submit additional information regarding the correct legal description of the property, ownership, and a revised Plat of Survey, if necessary. If the correct legal description and/or lot size are substantially different from what was presented tonight, a revised Staff Report and Recommendation may be required.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval of the request for variances from the road setback, offset, floor area ratio and open space requirements, approval of the request for a special exception from the minimum first floor area, denial of the request for variances from the shore setback and floodplain setback and denial of the request for a special exception from the accessory building floor area ratio requirements, with the following conditions:

1. A Certified Survey Map combining the two legal lots of record into one lot must be prepared by a registered land surveyor and submitted to the Town of Oconomowoc and the Planning and Zoning Division staff for review and approval. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit for the addition.
2. No detached garage is permitted.
3. All existing retaining walls on the south side of Gietzen Road must be removed. No retaining walls are permitted within 75 of the shore. The area shall be re-graded and then vegetated

with a native buffer. The buffer shall be approved by Planning & Zoning Division staff prior to issuance of a Zoning Permit for the new residence.

4. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission.
5. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), attached garage, any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 1,500 sq. ft. This will result in a floor area ratio of approximately 22.2%.
6. The proposed residence must have an attached garage of at least 400 sq. ft.
7. The footprint shall consist of the 400 sq. ft. garage and 600 sq. ft. on the first floor.
8. Any proposed storage area over the attached garage must be included in the floor area calculations, unless it is accessible only via pull-down stairs from the garage and cannot be accessed from the upper level of the residence either now or in the future. If the house plans indicate that any storage area over the attached garage could be easily converted to living area with a direct connection to the upper level of the residence, a Declaration of Restrictions, stating that area cannot be converted to living area without the approval of the Waukesha County Board of Adjustment or its successor, must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
9. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
10. The residence and attached garage and all other appurtenances must be at least 5 ft. from the west and east lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
11. The residence and attached garage must be a minimum of 36 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Okauchee Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width.
12. The proposed decks and patio must be a minimum of 30 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Okauchee Lake, whichever is more restrictive.
13. The residence and attached garage must be at least 5 ft. from the right-of-way of Gietzen Drive, with an overhang not to exceed two (2) ft. in width.
14. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
15. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, as well as all existing structures that are proposed to remain, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division

staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.

16. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 13.

17. Occupancy shall not be permitted until municipal sewer is available to the property.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

A Plat of Survey showing the recommended building envelope is attached as Exhibit "C". The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome and is in scale with the lot size. It has not been demonstrated, as required for a variance, that denial of the requested variances from the shore and floodplain setback requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is possible to construct a reasonably sized residence and attached garage that is substantially more conforming than the requested proposal. While there are steep slopes on the property, this is not a unique situation to this property. All of the properties in the immediate area of Gietzen Dr. contain the same type of topography as this lot. This property is bisected by Gietzen Drive, but this is also not unique to this property. More importantly, it is possible to redesign the home and garage and build in a location that would be conforming to the shore and floodplain setback requirements. Granting of the road setback variance allows further flexibility in attaining the shore and floodplain setback requirements. A road setback variance, as recommended, will not interfere with the public's use of the road or be a safety hazard. The recommended location of the residence and attached garage is further back from the road than the existing structure and also eliminates the need for structures on both sides of the road and the potential hazard of foot traffic across this narrow, winding road. It will result in a residence with an attached garage located 3 ft. from the edge of the right-of-way, and 10 ft. from the actual road, which will provide enough area for safe ingress and egress from the garage. In addition, the recommended floor area ratio of 22.6% would permit a total floor area (not including the fully exposed basement level or storage area over the garage) of 1,500 sq. ft. With the basement level, it is possible to achieve over 2,500 sq. ft. of floor area, which provides a reasonable use of this property. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Waukesha County staff, that the proposed residence and detached garage are too large for the lot. In addition, the proposed residence and detached garage requires major disturbance to two different slopes and it is felt this is not necessary and would be a detriment to the natural resources in the area. As recommended, there will be no more disturbance to the south slope than what the petitioners had already proposed; however the disturbance to the north slope is completely eliminated. Further, a total floor area of 1,500 sq. ft. (not including the

basement square footage or storage over the garage) provides a reasonable use of the property, is not unnecessarily burdensome, and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA06:003 JAMES & CATHERINE BURNS
Larry Babb - Petitioner

Mr. Tarmann

I move to approve the request in accordance with the staff's recommendation, subject to the conditions recommended in the Staff Report and for the reasons stated in the Staff Report with the following modification:

Condition #6 shall be eliminated.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. A Certified Survey Map combining the two legal lots of record into one lot must be prepared by a registered land surveyor and submitted to the Town of Merton and the Planning and Zoning Division staff for review and approval. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit for the addition.
2. The proposed addition is not to extend beyond the existing foundation and shall be one story only.
3. The addition must comply with the shore setback, floodplain setback and offset requirements in the Ordinance.
4. Prior to the issuance of a Zoning Permit, a stake-out Plat of Survey showing the location of the proposed residence, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, as well as all existing structures (deck, patio, stairs, retaining walls, etc) that are proposed to remain, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.
5. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
6. Prior to the issuance of a Zoning Permit, the shed must be removed from the property.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage,

height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A road setback variance, as recommended, will not interfere with the public's use of the road or be a safety hazard. Further, a road setback variance was already granted to allow the existing covered porch. The addition will be located further from the road than the existing structure and will be on the footprint of an existing covered porch. Conformance with the open space requirement of 15,000 sq. ft. is impossible because the lot area is only 8,710 sq. ft. The existing house is already nonconforming to the district's minimum square footage requirements; the current proposal does not change this situation at all as a covered porch is counted as living area just as the addition would. A previous variance has also already been granted to allow remodeling and additions that exceeded 50% of the fair market value of the structure; therefore, it is reasonable to allow another variance from that provision of the Ordinance. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. As recommended, the proposal provides a reasonable use of the property that is not unnecessarily burdensome and will permit a small addition on the residence that is not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA06:004 NANCY M. HUME
Larry Babb – Petitioner

Mr. Tarmann

I make a motion to approve the floor area ratio, open space and offset variances and approve the special exception from the maximum accessory building floor area ratio, with the conditions as stated in the staff report, with the following modifications:

Condition #1 shall read as follows: Prior to the issuance of a Zoning Permit for the new residence, the greenhouse must be removed from the property.

Condition #2 shall read as follows: The existing patio must be removed and any newly constructed patios, decks or other appurtenances must meet the required setback from the Ordinary High Water Mark of Okauchee Lake and the 100-Year Floodplain, whichever is more restrictive. The property owner shall supply a survey of adjacent structures to Planning & Zoning Division staff if they are to be utilized for setback averaging. If no additional survey information is received, the required setback for decks and patios is 55.4 ft.

Condition #4 shall read as follows: The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, the attached garage, existing detached garage and existing boathouse do not exceed 3,034 sq. ft. This will result in a floor area ratio of approximately 19.5%.

Condition #5 shall read as follows: The proposed residence must have a first floor of at least 850 sq. ft. and an attached single-car garage. In the event that the detached garage is removed, the attached garage must be a minimum of 400 sq. ft. in size.

Condition #8 shall read as follows: The residence must be at least 7 ft. from the western and eastern lot lines, as measured to the outer edges of the walls and any windows/bump outs, stairs, stoops, hot tubs, etc., that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.

Condition #15 shall read as follows: Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff. Alternatively, proof of sewer hook-up must be provided.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval of the request for variances from the offset, floor area ratio and open space requirements, and denial of the request for a special exception from the accessory building floor area ratio requirements, with the following conditions:

1. Prior to the issuance of a Zoning Permit for the new residence, the existing boathouse, detached garage and greenhouse must be removed from the property. The area around the boathouse shall then be re-graded and then vegetated with a native buffer. The buffer shall be approved by Planning & Zoning Division staff prior to issuance of a Zoning Permit for the new residence.
2. The existing patio must be removed and any newly constructed patios, decks or other appurtenances must be located 55.4 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Okauchee Lake, whichever is more restrictive.
3. The residence, attached garage, decks, and patios must be a minimum of 55.4 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Okauchee Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width.
4. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 3,034 sq. ft. This will result in a floor area ratio of approximately 19.5%.
5. The proposed residence must have a first floor of at least 850 sq. ft. and an attached garage of at least 400 sq. ft.
6. Any proposed storage area over the attached garage must be included in the floor area calculations, unless it is accessible only via pull-down stairs from the garage and cannot be accessed from the upper level of the residence either now or in the future. If the house plans indicate that any storage area over the attached garage could be easily converted to living area with a direct connection to the upper level of the residence, a Declaration of Restrictions, stating that area cannot be converted to living area without the approval of the Waukesha County Board of Adjustment or its successor, must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
7. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
8. The residence must be at least 7 ft. from the western and eastern lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the

structure than the walls, with overhangs not to exceed two (2) ft. in width.

9. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
10. No new or rebuilt retaining walls will be permitted within 75 ft. of the lake, unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission.
11. The residence and attached garage must be at least 35.5 ft. from the right-of-way of Park Bay Drive, with an overhang not to exceed two (2) ft. in width.
12. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
13. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, as well as any existing structures that are proposed to remain, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.
14. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The submitted "Drainage Plan" is not acceptable as it does not show the correct location of the residence nor does it address the removal of existing structures. This grading plan may be combined with the Plat of Survey required in Condition No. 13.
15. Occupancy shall not be permitted until municipal sewer is available to the property.

The reasons for the approval are as follows:

The approval of this request, with the approved conditions, will allow a reasonable use of the property that is not unnecessarily burdensome and is in scale with the lot size. Further, the variances from offset, floor area ratio and open space are essentially temporary, as the structures on the property, as conditioned, will be completely conforming once sewer is in place. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Board, that the proposed residence and attached garage are too large for the lot and a smaller residence and attached garage, as approved, would still provide for a reasonable use of the property. As approved, a total floor area of 3,034 sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit a residence, attached garage, existing detached garage and existing boathouse that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the conditional approval of this request is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:071 JOHN & CATHERINE ROBERTSTAD

Mr. Tarmann *I make a motion to reconsider the floor area ratio variance granted on September 28, 2005, to permit the construction of an addition to the Robertstad residence so that the Board can review the height of the addition, which differs from the original plans.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Note: Reconsideration of the denial of a floor area ratio variance for a proposed boathouse, as requested by Mr. and Mrs. Roberstad, was not included in the motion. Therefore, the decision made on September 28, 2005, to deny a request for a floor area ratio variance to permit the construction of a boathouse, stands.

Mr. Dwyer *I make a motion to affirm that the addition under construction, as shown on the revised plans, is in conformance with the floor area ratio variance that was granted on September 28, 2005, with the condition that the roofline changes being made in construction of the addition may not result in any expansion of the existing second floor bedroom.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was to affirm that the revised plans are in conformance with the floor area ratio variances granted on September 28, 2005.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The addition under construction, with the minor changes to the originally proposed roofline, will not result in a floor area ratio in excess of that which was permitted and it is in conformance with the height requirements of the Ordinance.

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Mr. Tarmann *I make a motion to reconsider our decision of January 25, 2006, because that decision did not address the revised plans presented at the hearing.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Mr. Tarmann *I move to approve the revised plans, which will result in a floor area ratio of approximately 6.5%, and to amend Condition #4 of our decision of January 25, 2006, as recommended in the Staff Memorandum. All other previous conditions of approval shall remain the same.*

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was to amend Condition #4 of the approval of January 25, 2006, to read as follows:

"Final house plans showing additions no larger than indicated on the plan submitted to the Planning and Zoning Division staff on January 31, 2006, and in conformance with the shore setback requirement, utilizing the shore and floodplain setback averaging provision of the Ordinance, must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit."

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The slightly larger addition on the road side of the residence, as shown on the revised floor plan submitted to the Planning and Zoning Division Staff on January 31, 2006, will not adversely affect the lake or the neighboring properties, is not contrary to the public interest, and is still conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Bartholomew and carried unanimously.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 10:15 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Sheri K. Mount
Secretary, Board of Adjustment